

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of the State 911 Department for : RE: D.T.C. 15-2
Adjustment of the Enhanced 911 Surcharge :

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

I. INTRODUCTION

CTIA-The Wireless Association® (“CTIA”) hereby submits its written comments in response to the Department of Telecommunications and Cable’s (“DTC”) March 26, 2015 Notice of Public Hearing in connection with the above-referenced matter.

This proceeding was commenced in response to a petition to the DTC by the State 911 Department (the “911 Department”) requesting an adjustment to the Enhanced 911 (“E911”) surcharge. Specifically, the 911 Department has requested that the DTC authorize a 67% increase in the E911 Surcharge from the current rate of \$0.75 to \$1.25 until June 2016, and then to \$1.00 thereafter. If granted, the adjustment would represent a \$44.2 million increase in the E911 assessment imposed on telecommunications providers and consumers in 2016 (\$24-\$26 million every year thereafter) and result in one of the highest assessments for E911 service in the country.¹

CTIA and its member companies support appropriate funding for the Commonwealth’s E911 system and improvements to that system, especially with regard to Text-to-911 and Next Generation 9-1-1 (“NG911”) implementation. However, CTIA is concerned that the magnitude of the surcharge increase, coupled with the lack of information provided about the 911 Department’s finances over the past three years, could place an unjustified economic burden on

¹ See National Emergency Number Association, “9-1-1 Surcharge – User Fees by State,” *available at* <https://www.nena.org/?page=911RateByState> (last accessed April 20, 2015).

Massachusetts' wireless consumers. For this reason and those outlined below, CTIA suggests that the DTC ensure that the 911 Department present sufficient evidence to justify such a significant increase, encourage the adoption of a "Point of Sale" collection methodology for the E911 surcharge for prepaid wireless services, and limit the term of any surcharge increase to one year while the DTC establishes rules that set a baseline standard for review of future requests to change the 9-1-1 surcharge.

In the petition to approve funding, the 911 Department has shown a concerning lack of transparency that is inconsistent with Massachusetts law. The 911 Department has not filed its statutorily required financial reports since 2012. These reports are intended to ensure accountability and transparency in the 911 Department's use of funds collected from Massachusetts wireless consumers. In addition, the 911 Department's petition and responses demonstrate that the 911 Department amassed a \$100 million surplus, which calls into question the necessity for a significant surcharge increase at this time.

The brief explanations and line items listed in the 911 Department's petition and responses to data requests do not provide adequate justification for the DTC to approve a 67% E911 surcharge increase at this time. As presented in the petition and responses, the \$1.25 and \$1.00 figures for the new E911 surcharge appear arbitrarily chosen without a tie to specific budgetary figures. By the 911 Department's own admission, these figures will again produce a significant surplus for the 911 Department in coming years.

To encourage greater transparency and ensure that the E911 surcharge is appropriately tailored to the needs of the 911 Department, CTIA believes the DTC should require that the 911

Department demonstrate the need for such a significant surcharge increase through detailed budgetary and cost analyses and testimony.

Further, the DTC should encourage the 911 Department to revise the E911 surcharge rules by adopting a “point of sale” methodology for assessment from prepaid wireless consumers, which would better fulfill the statutory requirement of an equitable and reasonable assessment of the surcharge on each subscriber or end-user. In addition to more equitably allocating responsibility for support of the 911 system, a point of sale methodology for prepaid wireless services, which has been adopted in 36 states, the District of Columbia, and the U.S. Virgin Islands, could help offset the need for a surcharge increase by providing millions of dollars in revenue for the 911 Department.² The 911 Department should take full advantage of this opportunity to institute an equitable system which would assess wireless end users similarly and potentially reduce the size of the E911 surcharge needed by the 911 Department.

Finally, if the DTC does choose to approve an increase of the E911 surcharge, the DTC should revert the surcharge to the current level of \$0.75 after one year, rather than the \$1.00 requested by the 911 Department. This year would give the 911 Department the opportunity to file its statutorily required financial reports, and give the DTC the chance to promulgate appropriate standards for review of surcharge petitions, while ensuring that the surcharge is appropriately tailored to the budgetary needs of the 911 Department based on evidence rather than estimates.

² See Mackey, Scott, “Updated Massachusetts Prepaid Point of Sale Revenue Estimate”, *KSE Partners* (April 14, 2015), at Appendix A.

II. THE DTC SHOULD REQUIRE THAT THE 911 DEPARTMENT PRESENT SUFFICIENT EVIDENCE TO JUSTIFY AN INCREASE IN THE E911 SURCHARGE

Due to the significant size of the E911 surcharge increase requested by the 911 Department, which would represent an additional \$44.2 million in charges on Massachusetts consumers next year and approximately \$25 million a year thereafter, CTIA believes the DTC should require that the 911 Department present additional evidence to justify such an increase before it can be approved. While CTIA strongly supports appropriate funding for the Commonwealth's E911 system and improvements to that system, including the implementation of Text-to-911 and NG911, CTIA is also concerned about a lack of transparency and financial justification in the 911 Department's funding request.

The 911 Department's petition fails to provide sufficient detail to justify why such a significant increase in the E911 Surcharge is necessary. The petition provides only line items and brief explanations for costs, without details on the necessity of such costs, or the financial basis behind the decisions made. Further, the 911 Department's responses to the recent data requests made by the DTC fail to offer much more justification for its requested surcharge increase or the specific amount of the increase chosen.

This lack of information is exacerbated by the 911 Department's failure to file its statutorily required annual financial reports. Massachusetts law requires the 911 Department to report annually to the DTC on the financial condition of the E911 fund and on the 911 Department's assessment of new developments affecting the E911 system³. The 911 Department did not submit the required reports to the DTC for Fiscal Years 2013 and 2014. As a result, the

³ See M.G.L. ch.6A §18H(b).

DTC and parties to this proceeding do not presently have adequate information to ascertain how the 911 Department spent the previous years' allocated funds.

Justification of the E911 surcharge increase is particularly important given the potential economic impact of a 67% surcharge increase on Massachusetts' wireless consumers. If the E911 surcharge was increased to \$1.25, the Commonwealth's surcharge would be one of the highest statewide 911 surcharges or fees in the country.⁴ Additionally, the proposed increase to the E911 surcharge would raise the overall economic burden on Massachusetts wireless consumers, who currently face a combined tax, fee, and surcharge rate of 13.61% on wireless service in Massachusetts. This includes an average state and local tax and fee burden of 7.79% on their wireless service, and an additional 5.82% federal USF surcharge. In contrast, the general sales tax rate in Massachusetts is only 6.25%.⁵

While the 911 Department's petition proposes the surcharge be reduced to \$1.00 following 2016, this number appears to be arbitrary. The 911 Department provides no evidence indicating how it arrived at such a figure, and the petition does not link this number to ongoing expenditures. Based on the figures cited by the 911 Department in their petition, this figure would create a significant annual surplus for the 911 Department in the years following 2016. The 911 Department should justify a figure which meets their needs without excess burden on wireless consumers.

Additionally, neither the 911 Department's application nor its data responses provide specific information regarding plans for the implementation of Text-to-911 and Next Generation

⁴ See *fn 1*. An increase to \$1.25 would place Massachusetts' 911 surcharge on wireless consumers as the 9th highest in the nation, comparing it to the maximum charge levied in all other states.

⁵ See Mackey, Scott and Henchman, Joseph. "Wireless Taxation in the United States 2014." Tax Foundation (October 8, 2014), *available at* <http://taxfoundation.org/article/wireless-taxation-united-states-2014>.

911 systems in the Commonwealth of Massachusetts which would justify a continued increase in the E911 surcharge, especially in light of the 911 Department's significant existing budgetary surplus. In particular, CTIA notes that the 911 Department claims that its implementation of NG911 will require an increased surcharge in the years following 2016. With the retirement of the current E911 system, the transition to NG911 should mean overall cost savings.⁶ Given that fact, CTIA believes that the 911 Department should present evidence on the economic impact of an NG911 system beyond 2016 in conjunction with their surcharge increase request.

CTIA strongly supports investment in Text-to-911 and NG911 technology, which will provide a number of benefits to consumers and the public safety community. However, given the significant economic impact a surcharge increase would have on Massachusetts consumers, before approving the 911 Department's petition, the DTC should ensure the 911 Department has presented sufficient and specific evidence to justify the need for such a large increase in funding.

This evidence should include, at a minimum:

1. Budgetary and cost analyses addressing the current financial status of the fund, including testimony from the 911 Department.
2. The economic justification for a nearly \$50 million increase to the E911 surcharge on Massachusetts wireless consumers in 2016.
3. Any economic justification for keeping the surcharge at \$1.00 after 2016, including an assessment of cost savings provided by NG911 deployment.

⁶ For example, the 911 Department notes in its data responses that expenses for IT services and equipment and consultant services "may decrease once the Next Generation 911 system has been deployed," but maintains these line items at an increased level through at least Fiscal Year 2019. *See* "State 911 Department Responses to the First Set of Information Requests of the Department of Telecommunications and Cable to the State 911 Department," D.T.C. 15-2 (April 21, 2015), at 4, 7.

4. Further details regarding the 911 Department's plans for its implementation of Text-to-911 and Next Generation 911 in the Commonwealth of Massachusetts, and detailed breakdowns of the costs associated with that implementation.⁷

By presenting such evidence, the 911 Department can help ensure accountability and transparency for Massachusetts' wireless consumers, who have to bear the economic burden of such a significant increase, and help ensure that any increase to the surcharge is limited to the amount necessary to implement E911 improvements in Massachusetts without any unnecessary surplus.

III. THE DTC SHOULD ENCOURAGE THE 911 DEPARTMENT TO ADOPT A POINT OF SALE METHODOLOGY FOR COLLECTING ASSESSMENTS FOR PREPAID WIRELESS SERVICE TO LIMIT THE NEED FOR SUCH A SUBSTANTIAL INCREASE IN THE E911 SURCHARGE

The current system for collecting the E911 surcharge is inequitable among wireless consumers, and results in significantly less revenue to the 911 Department due to the lack of a point of sale ("POS") collection methodology. As such, CTIA urges the DTC to encourage the 911 Department to adopt a point of sale methodology for collecting the E911 surcharge from prepaid wireless service. A point of sale methodology would better fulfill the statutory requirements for E911 surcharge collection, while doubling the 911 Department's revenue from prepaid wireless service by taking full advantage of the resources which exist under the current surcharge.

By statute, the E911 surcharge is to be "imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system...."⁸

⁷ The provision of such information also would be consistent with federal efforts to promote economic efficiency in NG911 deployment; specifically, the Federal Communications Commission's ("FCC's") recently established Task Force on Optimal Public Safety Answering Point Architecture, which has the goal of "promot[ing] greater efficiency of operations, safety of life, and cost containment." See <http://www.fcc.gov/encyclopedia/task-force-optimal-public-safety-answering-point-architecture-tfopa>.

Massachusetts law further requires that the 911 Department promulgate regulations establishing an “equitable and reasonable” method for the remittance and collection of the E911 surcharge from users of prepaid wireless service.⁹ In response, the 911 Department established regulations pursuant to which wireless providers either (1) collect the E911 surcharge from subscribers on a monthly basis; or (2) calculate and remit the surcharge on a monthly basis based upon the product of the provider’s Massachusetts revenue for prepaid wireless service divided by its national average revenue per prepaid user, multiplied by the E911 assessment surcharge (“prepaid formula”).¹⁰

However, accurate collection of the surcharge from prepaid wireless subscribers on a monthly basis is not feasible, due to the general lack of a direct and ongoing billing relationship between prepaid wireless providers and customers. As a result, instead of assessing end users of the service as required by statute, the 911 Department’s regulations require prepaid wireless providers to pay the surcharge using the prepaid formula methodology. In contrast to the original intent of the Legislature, the current system creates an inequity between postpaid wireless consumers, who pay the surcharge directly, and prepaid wireless consumers, who do not.

The 911 Department’s prepaid formula methodology predates the proliferation of prepaid wireless service. As of 2014, one in five wireless consumers is now a prepaid consumer.¹¹

However, E911 surcharge collections associated with prepaid in Massachusetts under the current

⁸ See M.G.L. ch.6A §18H(a) (“There shall be imposed on each subscriber or end user whose communication services are capable of accessing and utilizing an enhanced 911 system, a surcharge in the amount of 75 cents per month...”)

⁹ *Id.* (“For prepaid wireless service, the department shall promulgate regulations establishing an equitable and reasonable method for the remittance and collection of the surcharge or surcharge amounts for such service.”)

¹⁰ 560 C.M.R. 3.05.

¹¹ Dr. Robert Roche and Liz Dale, “Prepaid Wireless Service in the United States: Year-End 2013 Results” (June 2014), at 7.

method have not adjusted for the growth in prepaid subscriptions, and as such, the 911 Department has not been able to maximize revenues under the current system.

The more accurate, equitable and reasonable approach for collection of the E911 surcharge from prepaid wireless services would be for the 911 Department to require collection of the assessment at the point-of-sale, as is done in 36 states, the District of Columbia, and the U.S. Virgin Islands. In addition to better fulfilling the statutory requirement for an equitable and reasonable method of collection which applies the E911 surcharge to end users of the 911 system, point of sale is a far more accurate methodology than the current carrier-estimates-and-pays model. According to a study by KSE Partners, a point of sale methodology would double collections from prepaid wireless service, increasing the 911 Department's revenues by millions of dollars annually.¹² The 911 Department should take full advantage of the funding available from prepaid wireless service that exists today, which would help to limit the size of the surcharge necessary for the 911 Department to meet its needs.

For these reasons, the DTC should encourage the 911 Department to adopt a point of sale methodology for collection of the E911 surcharge from prepaid wireless consumers.

IV. IF ANY INCREASE IS JUSTIFIED, THE DTC SHOULD REVERT THE E911 SURCHARGE TO \$0.75 AFTER ONE YEAR AND SUBSEQUENTLY REASSESS THE NEED FOR AN INCREASED SURCHARGE

As demonstrated above, due to the potential for a significantly increased economic burden on Massachusetts consumers and the large budgetary surplus which the 911 Department currently possesses, the DTC should not approve any E911 surcharge increase without sufficient

¹² The "formula" method has produced only \$3.86M in annual revenue from prepaid for the 911 Department, while under a point of sale methodology, prepaid is projected to produce \$7.80M in annual revenue for the Department. *See fn 2.*

evidence from the 911 Department to justify the increase. However, if any increase is justified, it should be limited to an appropriate size and length so as to provide for E911 improvements while minimizing the economic impact on consumers.

According to the petition filed by the 911 Department, the bulk of the non-recurring charges incurred by the 911 Department will be paid during Fiscal Years 2015 and 2016. The 911 Department's petition calls for a decrease in the surcharge after that time, to \$1.00, which still represents a 33% increase over the current surcharge. However, as noted above, the petition does not provide justification for how the 911 Department arrived at this \$1.00 figure.

The petition itself demonstrates that a further decrease after 2016 is warranted. Specifically, it shows that the 911 Department's total estimated expenses will drop from \$143.7 million in 2015 to \$89.7 million by 2019. It also shows that beginning in 2017, the proposed \$1.00 surcharge rate will yield an annual budget surplus of over \$6 million every year. The 911 Department has not justified charging consumers at a rate designed to yield \$96 million in annual revenue when the 911 Department's own figures show that it requires only \$90 million a year. This large annual surplus in the 911 Department's proposal further demonstrates the DTC should require further specific evidence from the 911 Department to support its increase, as discussed above.

Given the impact of a potential 67% surcharge increase on Massachusetts' consumers, if the DTC chooses to approve an increase in the E911 surcharge, it should revert the surcharge to the current level of \$0.75 after one year, rather than the \$1.00 requested by the 911 Department. This will allow the DTC and the 911 Department to determine an appropriate level of funding for subsequent years based on timely budgetary data, rather than an arbitrary estimate which, by the 911 Department's own figures, will produce a significant excess surplus.

During that year, the DTC should request that the 911 Department submit its statutorily-required financial reports for Fiscal Year 2013, 2014, and 2015, with appropriate detail to justify any surcharge increase. By requiring the 911 Department to meet its statutory obligation to file said reports, the DTC can promote greater transparency for Massachusetts consumers who support the 911 Department.¹³

Additionally, the DTC should establish baseline standards for the review of increases to the E911 surcharge to clarify for all parties what is necessary to meet the statutory requirements for a surcharge increase.¹⁴ Limiting any surcharge increase to a period of one year would afford the DTC time to promulgate such standards so that all parties could approach any subsequent petition to increase the surcharge with a better understanding of what information is necessary to support a surcharge increase.

Limiting any surcharge increase to a period of one year only would also allow the 911 Department to provide for its non-recurring expenditures in 2015 and 2016, if additional funding is necessary for those expenses. At the same time, this approach will limit the economic burden on Massachusetts' wireless consumers by ensuring that the E911 surcharge is not unjustifiably inflated during years when the funding is not needed. If the 911 Department's budgetary needs require a surcharge increase beyond 2016 in order to maintain adequate funding, it can petition the DTC with appropriate evidence at that time.

¹³ See *fn* 3. On p. 3 of the petition, the 911 Department asks that the DTC accept its petition as a replacement for its required financial reports. CTIA does not believe the petition contains sufficient detail to make it useful as a replacement for the last three years of reporting, and thus believes the DTC should reject this request from the 911 Department.

¹⁴ See M.G.L. ch.6A §18H(b) ("The [DTC] shall adopt rules that provide for the funding of *prudently incurred expenses* associated with services provided by sections 18A to 18J, inclusive, and sections 14A and 15E of chapter 166, by means of the surcharge....") [emphasis added]

V. CONCLUSION

While CTIA and its member companies support appropriate funding for the Commonwealth's E911 system and improvements to that system, that funding should be tailored to provide for such improvements without excess surplus which would place an unjustified economic burden on the Massachusetts wireless consumers who support that system. In addition, the DTC should ensure that the 911 Department presents sufficient evidence to justify such a significant increase in the E911 surcharge, encourage the adoption of a "point of sale" collection methodology for the E911 surcharge so as to take full advantage of current funding sources, and limit the term of the surcharge increase to one year while the DTC establishes rules that set a baseline standard for review of future requests to change the 911 surcharge.

Respectfully submitted,



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CERTIFICATION

I hereby certify that I have this date served a copy of the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding, dated at Hartford, CT, this 29th day of April.

A handwritten signature in black ink, appearing to read "D. Bogan", written over a horizontal line.

David W. Bogan, Esq.